



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

August 17, 1995

Honorable Nathan B. Rheinlander
Comal County Attorney
Office of County Attorney
150 North Seguin, Suite 318
New Braunfels, Texas 78130

Letter Opinion No. 95-051

Re: Whether, when a court has ordered payment of attorney fees to a court-appointed attorney who incurred expenses defending him- or herself against claims brought by an indigent client whom the attorney previously had been appointed to represent, a county is permitted or required to pay such fees (ID# 31348)

Dear Mr. Rheinlander:

You request our opinion as to whether a county may reimburse an attorney for attorney fees and expenses the attorney has incurred defending him- or herself in a civil action brought by a former client, an indigent defendant the attorney represented as court-appointed attorney. We understand that Comal County has received two claims for reimbursement, one for \$5,000.00 in expenses from the law firm of an attorney (now deceased) who served as a court-appointed attorney representing an indigent defendant in a criminal action, and the second for \$2,094.00 in attorney fees and \$4,162.50 in expenses from an attorney who served as court-appointed attorney representing the same indigent defendant in a separate criminal action. In each instance, subsequent to the conclusion of the criminal action, the defendant in the criminal action sued his court-appointed attorney for malpractice or ineffective assistance of counsel.

You state that the District Judge of Comal County dismissed both cases, finding that they were without merit. Also in both cases, the district judge signed an order awarding attorney fees and expenses. You indicate the county auditor has approved both claims for payment, but you have advised the Comal County Commissioners Court that article 26.05 of the Code of Criminal Procedure does not permit a county to pay the requested fees and expenses.

We understand the District Judge of Comal County has ordered the payment of attorney fees and expenses in the civil actions for malpractice and ineffective assistance of counsel. You suggest the district judge "approved" both of the claims for payment from the county. You appear to question the district judge's authority to require the county to pay attorney fees and expenses in this situation.

You ask, essentially, that this office consider the propriety and validity of the district judge's orders. We decline to do so. The attorney general will not issue an opinion that is effectively an appeal of a judicial decision. Attorney General Opinions JM-287 (1984) at 2 (quoting Attorney General Opinion O-1847 (1940)), H-905 (1976) at 1, O-1847 (1940) at 2. Accordingly, we will not consider whether article 26.05 of the Code of Criminal Procedure permits a county to pay the claims about which you ask.¹ Our declination to review these orders should not be viewed as an opinion as to their propriety or validity. We simply are following our long-standing practice of refusing to review judicial orders.²

S U M M A R Y

The attorney general will not consider the propriety or validity of a district judge's orders.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

¹Letter Opinion No. 92-44 (1992) is consistent with our decision here. In Letter Opinion No. 92-44 this office considered whether the Cherokee County Commissioners Court was required to increase the salaries of the court coordinator and secretary to the district judges pursuant to an order of the district court. Letter Opinion No. 92-44 (1992) at 1. The district court's order discussed in Letter Opinion No. 92-44 pertained solely to matters of county government. In particular, the court's order concerned the court's own administration and needs. Here, on the other hand, the district court issued its order in the context of litigation related only incidentally, if at all, to matters of county government.

²In your advisory letter to the Honorable Carter Casteel, County Judge of Comal County, you note that the orders will not be enforced unless the district judge or a special judge institutes contempt proceedings against the county or unless the claimants file a mandamus action in the court of criminal appeals. We understand, therefore, that, if an action is brought to enforce the claims, the county may make its arguments regarding the propriety and validity of these orders before the reviewing court.